

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**HAMPTON SCHOOL DISTRICT SAU 90**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275-E 2 1 (a) terminated for protective reporting

**Employer:** Hampton School District SAU 90, 6 Marston Way, Hampton, NH 03842

**Date of Hearing:** September 10, 2013

**Case No.** 46133

**BACKGROUND AND STATEMENT OF THE ISSUES**

A claim under the Whistleblowers' Protection Act was filed on June 20, 2013. The claimant feels that he was fired from his position with the employer because he reported a violation of law. The claimant testified that he reported an extension cord on top of a heater. The cord was powering a bank of computers and printers. The claimant felt that it was a safety hazard for the students.

Even though the employer corrected the issues, the claimant was fired from his job. In the claim the claimant is seeking full reinstatement and that the extra work that was given to him, be taken away from his scheduled rounds. At the start of the hearing, the claimant stated that he did not want his job back but he would accept enough time into his retirement so that he would be eligible to retire.

The claimant testified that he made the report of the hazard because it was located in a room that taught Specialized Education students. He said that he reported it by leaving an anonymous letter in the Superintendent's office. The claimant said that his annual contract was not renewed because of community fears and co-worker fears. He did say that there were four rooms added to his work schedule and this addition of work was punitive.

The employer testified that it was unclear if there was a violation of the cord issue but once it was reported by whoever made the report, it was corrected. The employer also said that the reported violation was never picked up by the Department of Labor or the Hampton Fire Department in any of their reviews. There were also anonymous pictures of the alleged violation left for the administration. This issue was only brought up by the claimant after his discharge from employment.

The claimant was disciplined for his use of time and technology. It was reported and investigated in regard to the computer system being used after hours in an area that the claimant worked.

After a meeting with his supervisors, the claimant admitted to the use of notes and that he was the "leaver of notes" in various locations. The claimant was asked to submit a remedy and he said that he would work extra hours to make up for lost time used on technology. He said he would not charge the Town for this extra time. The claimant was given extra rooms to take care of.

It was finally decided to not renew the claimant's contract because of the many issues. It was felt that the claimant did not use good judgment and so his contract was not renewed. The employer maintains that there is no relationship between the whistleblower's reporting and the termination.

### **FINDINGS OF FACT**

RSA 275-E: 2 I (a) No employer shall harass, abuse, intimidate, discharge, threaten, or otherwise discriminate against any employee regarding compensation, terms, conditions, location or privileges of employment because: (a) The employee, in good faith, reports or causes to be reported, verbally or in writing, what the employee has reasonable cause to believe is a violation of any law or rule adopted under the laws of this state, a political subdivision of this state, or the United States;

This part of the law protects employees who report violations of laws and then suffer a termination or some sort of discipline.

It is the finding of the Hearing Officer, based on the submissions and the testimony provided for the hearing, that the claim is invalid. The claimant has a burden to show that any action taken against him was based on protective reporting. He did not do this. It came to light during the hearing, that the employer did not know who reported the hazard.

The claimant was terminated by a non renewal of his annual contract for a multitude of reasons but not one for protective reporting. If the complaint was directly made by an employee, the employer would have some time to correct the issue. In this case the hazard, not found by the Department of Labor or the local Fire Department, was corrected by the employer.

### **DECISION AND ORDER**

As required by Appeal of Mary Ellen Montplaisir 147 N.H. 297 (2001), this Department is required to apply a "mixed motive analysis" on the evidence presented. Because of the circumstantial nature of the evidence alleged by the claimant, the analytical framework of a "pretext analysis" is appropriate. Under this analytical framework, the claimant has the initial burden of establishing a *prima facie* case of unlawful conduct/retaliation. This requires the claimant to show:

1. he engaged in an act protected by the statute;
2. he suffered an action proscribed by the statute (discrimination/termination); and

3. there was a causal connection between the protected act he engaged in (his report of late pay and his mention of the Department of Labor) and the action he suffered as a result of that protected act (discrimination and termination).

The establishment of a *prima facie* case creates a presumption that the employer unlawfully retaliated against the claimant. The burden of proof then shifts to the employer to rebut the claimant's assertions with evidence that their action was taken for legitimate, non-retaliatory reason(s). This burden of proof is only one of production. The claimant retains the burden of proof to persuade. In response to the employer's rebuttal, the claimant has the opportunity to show that the proffered legitimate, non-retaliatory reason for the action was not the true reason for the unlawful conduct/retaliation, and that his assertion was the true reason for the unlawful conduct/retaliation. The claimant can show this by establishing that the employer's proffered reason for the action is either not credible, or by directly showing that the action was more likely motivated by retaliation in response to his protected act.

The Whistleblowers' Protection Act report is invalid.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: October 8, 2013

Original: Claimant  
cc: Employer

TFH/all